

1 UNITED STATES DISTRICT COURT  
2 WESTERN DISTRICT OF TEXAS  
3 AUSTIN DIVISION

4 UNITED STATES OF AMERICA ) Docket No. A 08-CR-92(1) SS  
5 )  
6 vs. ) Austin, Texas  
7 )  
8 ARTHUR LONGORIA ) August 12, 2008

9 TRANSCRIPT OF TRIAL ON THE MERITS  
10 BEFORE THE HONORABLE SAM SPARKS  
11 Volume 2 of 2  
12

13 APPEARANCES:

14 For the United States: Ms. Rachelle R. Douglas  
15 Mr. Grant Sparks  
16 Assistant U.S. Attorneys  
17 816 Congress Avenue, Suite 1000  
18 Austin, Texas 78701

19 For the Defendant: Mr. Stephen M. Orr  
20 Orr & Olavson  
21 804 Rio Grande Street  
22 Austin, Texas 78701

23 Court Reporter: Ms. Lily Iva Reznik, RPR, CRR  
24 200 W. 8th Street  
25 Austin, Texas 78701  
(512) 916-5564

Proceedings recorded by mechanical stenography, transcript  
produced by computer.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**I N D E X**

	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
<u>Witnesses:</u>				
Belinda D. Olivo		5	10	
Sophia Martinez	11			

**E X H I B I T S**

	<u>Offered</u>	<u>Admitted</u>
<u>Government's</u>		
(None.)		
<u>Defendant's</u>		
(None.)		

09:00:08 1 THE COURT: All right. I've reviewed the defendant's  
09:00:12 2 memorandum. I did some thinking about it last night. And what I  
09:00:17 3 will allow, of course, on the cross-examination is you can ask  
09:00:21 4 Ms. Olivo if she'd ever seen the gun they kept under the  
09:00:26 5 mattresses, if they'd ever seen the shotgun that was in the safe,  
09:00:31 6 or ever seen the shotgun in the closet, but limit your  
09:00:36 7 cross-examination to the guns.

09:00:38 8 MS. DOUGLAS: Yes, sir.

09:00:40 9 THE COURT: All right. We're one juror short, so we're  
09:00:52 10 waiting for a few minutes.

09:01:49 11 All right. Counsel, the jury's here. Are you ready?

09:01:52 12 MS. DOUGLAS: Yes, your Honor.

09:01:53 13 THE COURT: All right.

09:01:59 14 (Jury present.)

09:03:10 15 THE COURT: Members of the jury, those of us that work  
09:03:18 16 in the building -- it was built in 1931 -- are just thankful for  
09:03:21 17 the days that we have air conditioning. And we have learned,  
09:03:25 18 over the years, never to ask them to turn it down because usually  
09:03:29 19 that ends up off. And this part of the building is the newest  
09:03:38 20 part, redone 1995 for this courtroom. It's a great courtroom.  
09:03:45 21 Much better than the other courtrooms that were built many, many  
09:03:48 22 years ago with acoustics and that type of thing.

09:03:50 23 But these columns, I've tried to get the architects to  
09:03:55 24 take the columns out so that I could -- I can't see all the way  
09:03:58 25 down to the folks there and they can't see back, but that's the

09:04:02 1 way construction was in those days. And they assure me that if  
09:04:06 2 we remove the column, the building would fall down. So the first  
09:04:12 3 day of our new opening of the courtroom, we had a full audience,  
09:04:19 4 all of the jurors here, many lawyers were going to select a very  
09:04:25 5 large jury for a multi-week case. And right in the middle of the  
09:04:33 6 presentation, Judge Nowlin, whose office is right above us,  
09:04:38 7 flushed his commode, and we didn't know it but all of the  
09:04:44 8 plumbing there came right down the middle of this column. So  
09:04:51 9 that we could do something about. We rerouted the plumbing. But  
09:04:56 10 for a while, every time somebody flushed the commode upstairs on  
09:05:00 11 2, we had to stop. So air conditioning and being cool is not  
09:05:05 12 bad. Now, one of these days, I want to find out why I have to  
09:05:12 13 watch an hour of each volleyball and get swimming. I don't guess  
09:05:17 14 I'll ever get that response.

09:05:20 15 Since we met yesterday, has anyone attempted to talk to  
09:05:24 16 any of you about this case?

09:05:26 17 JURORS: No.

09:05:26 18 THE COURT: Have you talked to anybody about the case?

09:05:28 19 JURORS: No.

09:05:29 20 THE COURT: And have you learned anything at all about  
09:05:32 21 the case, outside the presence of one another and this courtroom?

09:05:34 22 JURORS: No.

09:05:35 23 THE COURT: All right. Thank you. Show negative  
09:05:37 24 responses to all questions by all jurors.

09:05:42 25 Bring Ms. Olivo in, please.

09:05:45 1 MR. ORR: We're doing that, your Honor.

09:06:04 2 THE COURT: Ma'am, you understand that you're still  
09:06:06 3 under oath?

09:06:06 4 THE WITNESS: Okay.

09:06:07 5 THE COURT: Ms. Douglas.

09:06:08 6 MS. DOUGLAS: Thank you, your Honor.

09:06:10 7 CROSS-EXAMINATION

09:06:10 8 BY MS. DOUGLAS:

09:06:11 9 Q. Ma'am, my name is Rrachelle Douglas, the person prosecuting  
09:06:14 10 this case, along with Mr. Sparks, and it's my job to ask you a  
09:06:18 11 few questions. Will you be able to answer them for me?

09:06:20 12 A. Sure.

09:06:21 13 Q. Okay. I know yesterday, you indicated that you're cousins  
09:06:26 14 with Loretta?

09:06:27 15 A. Yes.

09:06:27 16 Q. Did you all grow up together?

09:06:29 17 A. Yes.

09:06:29 18 Q. Okay. So would you consider yourselves to be close?

09:06:32 19 A. Yes. I grew up in Ohio, so, you know, we traveled from Ohio  
09:06:36 20 to Texas. So I would see her growing up.

09:06:39 21 Q. Okay. So how long have you been here in Texas?

09:06:41 22 A. I've been in Austin for about 13 years, lived in Lubbock  
09:06:46 23 probably for about seven to ten years.

09:06:49 24 Q. Okay.

09:06:49 25 A. So quite a long time.

09:06:51 1 Q. All right. And once you've been here in Austin, did you  
09:06:56 2 establish a more close relationship with Loretta?

09:07:00 3 A. Well, a portion. So once she moved down here, yeah, I would  
09:07:06 4 say we got closer.

09:07:07 5 Q. And give me an idea, like, how close you would say you are.  
09:07:11 6 Do you see each other every day? Do you talk on the phone every  
09:07:14 7 day? Like, what is the category of relationship?

09:07:16 8 A. No, not every day, but I mean I was -- I guess probably for  
09:07:22 9 about three months, I was going through a breakup and we would  
09:07:26 10 talk quite a bit. We talked almost every day.

09:07:28 11 Q. Okay.

09:07:29 12 A. But I was, you know, working a lot, too, and that's when I  
09:07:33 13 would go to her house a lot and spend time with her, and she was  
09:07:36 14 kind of there for me through the breakup that I was going  
09:07:39 15 through.

09:07:39 16 Q. Okay. And let's try and narrow it down to the period of  
09:07:44 17 time that we're more concerned with as it relates to Jonathan  
09:07:48 18 Lee, because I know, yesterday, you said that you had met him  
09:07:51 19 through Loretta; is that correct?

09:07:52 20 A. Yes.

09:07:52 21 Q. And I believe, yesterday, you said you had known him about  
09:07:55 22 two years; is that correct?

09:07:57 23 A. Yes.

09:07:57 24 Q. Okay. And so, during that two-year period where Mr. Lee was  
09:08:02 25 in the company of Loretta and you had met him, how often would

09:08:06 1 you say you were seeing Loretta at that point in time? I mean

09:08:09 2 did you go over to her house once a week, every day?

09:08:12 3 A. Not every day. Probably maybe once or twice a week.

09:08:15 4 Q. Okay. And did she do the same? Did she come and frequent  
09:08:18 5 your home?

09:08:19 6 A. From time to time.

09:08:20 7 Q. Okay. But you were more frequently at her home?

09:08:23 8 A. Yeah.

09:08:23 9 Q. Now, during that two-year period, did they have a number of  
09:08:27 10 residences? And what I'm talking about is Arthur Longoria and  
09:08:30 11 Loretta.

09:08:31 12 A. As far as living?

09:08:32 13 Q. Right. Did they live in just one place that entire two  
09:08:35 14 years?

09:08:36 15 A. No. There was a couple of different places that they lived.

09:08:39 16 Q. Okay. What was the most recent place that they lived in  
09:08:43 17 prior to when this search warrant was executed on their home in  
09:08:46 18 December 2007? Where were they living, I'm sorry?

09:08:51 19 A. At the time of the incident?

09:08:53 20 Q. Yes, ma'am.

09:08:56 21 A. I know it's off Slaughter. I don't know what street it is.

09:09:00 22 Q. Okay.

09:09:01 23 A. But I know it's off Slaughter.

09:09:02 24 Q. Would you disagree if I said it was Howellwood Way?

09:09:06 25 A. No, I wouldn't, because I don't know exactly what street it

09:09:09 1 is, ma'am.

09:09:10 2 Q. Okay. But during the period of June to December of 2007,  
09:09:14 3 you were visiting them at a residence that they were living at?

09:09:18 4 A. Yes.

09:09:18 5 Q. Okay. And during that period of time, would you say you  
09:09:22 6 were over there frequently, the one to two times a week you've  
09:09:25 7 indicated?

09:09:25 8 A. Yeah. I would say I was probably over there two to three  
09:09:30 9 times a week.

09:09:30 10 Q. I believe on yesterday, you said during the two years that  
09:09:34 11 you've known Mr. Lee, you'd seen him over at Loretta and Art's  
09:09:37 12 house 30 times; is that correct?

09:09:39 13 A. Yes.

09:09:39 14 Q. Okay. And do you have any reason to believe that Mr. Lee  
09:09:44 15 only goes there when you're there?

09:09:45 16 A. No.

09:09:46 17 Q. Okay. Do you have knowledge that he's there sometimes when  
09:09:49 18 you're not there?

09:09:51 19 A. Well, yeah, because I know at one time, I think him and his  
09:09:54 20 girlfriend were actually staying there for a while.

09:09:56 21 Q. Okay.

09:09:57 22 A. I think they probably stayed there for maybe two or three  
09:10:00 23 weeks.

09:10:00 24 Q. Okay. So if someone lived with someone, would you say that  
09:10:03 25 that person was a pretty good friend?



09:10:05 1 A. Yes.

09:10:05 2 Q. Okay. Now, would it surprise you if I told you Art in his  
09:10:11 3 interrogation tape told the cops he had only seen Mr. Lee ten  
09:10:15 4 times during the period of time he's known him?

09:10:19 5 A. Yeah. That wouldn't surprise me.

09:10:21 6 Q. Because based on what you're saying, both of those things  
09:10:24 7 can't be true, correct?

09:10:24 8 A. Correct.

09:10:31 9 Q. Now, yesterday, you told the jury that you had never seen  
09:10:40 10 any firearms at the residence that Art and your cousin were  
09:10:43 11 sharing; is that correct?

09:10:44 12 A. Yes, ma'am.

09:10:45 13 Q. Do you -- well, I'll ask specifically, were you ever  
09:10:52 14 snooping around in their bedroom, the bedroom that they share?

09:10:55 15 A. No.

09:10:55 16 Q. Okay. So it wouldn't surprise you that the firearm was  
09:10:58 17 found in their bedroom underneath the mattress?

09:11:03 18 A. I wouldn't -- I don't know. I've never -- I mean I've never  
09:11:07 19 known them to have guns.

09:11:08 20 Q. But you're not disputing that that's why we're here, that  
09:11:10 21 police found firearms there, right?

09:11:12 22 A. No.

09:11:12 23 Q. Because you don't -- you didn't go in there and look  
09:11:14 24 underneath the mattress?

09:11:15 25 A. No. I didn't, no.

09:11:16 1 Q. And would it surprise you that the police found a shotgun in  
09:11:19 2 the safe at Arthur Langoria's bedroom?

09:11:23 3 A. It would surprise me. Yes.

09:11:24 4 Q. But you're not disputing that?

09:11:25 5 A. No.

09:11:26 6 Q. Pass the witness, your Honor.

09:11:30 7 RE-DIRECT EXAMINATION

09:11:30 8 BY MR. ORR:

09:11:31 9 Q. Would it surprise you to learn that Mr. Jonathan Lee  
09:11:35 10 indicated to the jury that he really didn't know Art, didn't know  
09:11:39 11 who he was, didn't know him very well?

09:11:41 12 A. Yes. That would surprise me.

09:11:43 13 Q. That he told the police he only knew him by Art?

09:11:46 14 A. Yeah. That definitely would surprise me.

09:11:49 15 Q. Pass the witness.

09:11:51 16 MS. DOUGLAS: Nothing further of this witness, your  
09:11:53 17 Honor.

09:11:55 18 MR. ORR: We call Sophia --

09:11:56 19 THE COURT: I get a turn.

09:11:58 20 MR. ORR: I'm sorry.

09:11:58 21 THE COURT: Lawyers get a turn, and every once in a  
09:12:01 22 while, the Judge gets a turn. May the witness be excused?

09:12:03 23 MS. DOUGLAS: Yes, your Honor.

09:12:05 24 THE COURT: You may be excused.

09:12:06 25 MR. ORR: I apologize. I'm just so eager, your Honor,

09:12:08 1 which is unusual.

09:12:09 2 THE COURT: Now you can be eager.

09:12:12 3 MR. ORR: Yes, sir. Sophia Martinez, please.

09:12:34 4 (Witness sworn.)

09:12:58 5 THE COURT: If you'll tell us, please, ma'am, your full  
09:13:00 6 name and spell your last name.

09:13:02 7 THE WITNESS: Sophia Martinez, M-A-R-T-I-N-E-Z.

09:13:11 8 SOPHIA MARTINEZ, called by the Defendant, duly sworn.

09:13:11 9 DIRECT EXAMINATION

09:13:12 10 BY MR. ORR:

09:13:12 11 Q. Where do you live, ma'am?

09:13:13 12 A. Right now?

09:13:14 13 Q. Well, okay. Right now.

09:13:16 14 A. Okay. I'm staying here with my aunt in Austin.

09:13:19 15 Q. Okay. And where have you -- where did you live before that?

09:13:22 16 A. In Lubbock.

09:13:22 17 Q. Okay. How long did you live in Lubbock?

09:13:25 18 A. Well, I've been in Lubbock all my life.

09:13:28 19 Q. Okay. So you got lucky and you got to move to Austin?

09:13:31 20 A. Yes, sir.

09:13:31 21 Q. And did you -- are you related -- who's your daughter?

09:13:38 22 A. Loretta.

09:13:38 23 Q. Okay. And do you know Art?

09:13:41 24 A. Yes, I do.

09:13:42 25 Q. Mr. Longoria, is that him sitting over here?

09:13:44 1 A. Yes, sir. He's my son-in-law.

09:13:45 2 Q. Okay. And how long have you known Art?

09:13:48 3 A. About five years.

09:13:50 4 Q. Okay. When is Loretta's birthday? Do you know what day it

09:13:54 5 is?

09:13:54 6 A. August the 29th.

09:13:57 7 Q. Okay. Somewhere in August. August 29th?

09:13:59 8 A. Yeah, August 29th.

09:14:01 9 Q. Okay. And do you know a guy named "Tater"?

09:14:07 10 A. Yes, I do.

09:14:08 11 Q. And do you know him -- is it -- that's Jonathan Lee?

09:14:11 12 A. Yes, sir.

09:14:12 13 Q. How do you know Mr. Jonathan Lee?

09:14:14 14 A. Well, I met him through Art and Loretta.

09:14:17 15 Q. Okay. And do you know how long he's known Loretta?

09:14:21 16 A. About three years.

09:14:22 17 Q. Do you know how long he's known Art?

09:14:25 18 A. About the same.

09:14:25 19 Q. Okay. So would you say that Art and/or Mr. Longoria and

09:14:33 20 your daughter and Mr. -- and "Tater" were friends?

09:14:36 21 A. Yes, sir.

09:14:37 22 Q. Okay. Let me ask you this: Has -- your daughter's never

09:14:45 23 been convicted of a felony, right?

09:14:47 24 A. No, sir.

09:14:48 25 MS. DOUGLAS: Objection, your Honor. May we approach?

09:14:56 1 (At the bench, on the record.)

09:15:01 2 MS. DOUGLAS: Your Honor, he has the same ability to  
09:15:04 3 run a criminal history since she's convicted of a theft, which I  
09:15:07 4 think I'll be able to ask her about.

09:15:09 5 MR. ORR: Of criminal theft?

09:15:09 6 MS. DOUGLAS: Yeah.

09:15:10 7 MR. ORR: I thought she didn't but -- okay. I'll  
09:15:12 8 withdraw the question.

09:15:13 9 THE COURT: It's a little late to withdraw the  
09:15:14 10 question. But you certainly have the right to prove up the fact  
09:15:17 11 that she has been. All right.

09:16:41 12 MR. ORR: Well, she's got a misdemeanor conviction.

09:16:44 13 MS. DOUGLAS: A theft conviction.

09:16:45 14 MR. ORR: That's not why I'm asking the question.

09:16:47 15 THE COURT: Okay. Question was, was she convicted of a  
09:16:52 16 felony.

09:16:53 17 MS. DOUGLAS: Yes, sir.

09:16:53 18 THE COURT: He put her criminal history in the  
09:17:01 19 question. That doesn't mean that the person's wrong that she  
09:17:03 20 just has a misdemeanor. But you can ask her if she can answer.

09:17:08 21 MR. ORR: I don't care about the misdemeanor. That's  
09:17:09 22 not my point. I'll ask her about the misdemeanor. I don't care  
09:17:12 23 if she's been convicted of a misdemeanor. That's not where I'm  
09:17:14 24 going.

09:17:15 25 THE COURT: Well, I understand where you're --

09:17:16 1 MR. ORR: I have an idea but, you know, look, I'm doing  
09:17:20 2 what I can do. This is not, you know -- so.

09:17:22 3 THE COURT: Let's just go back and play like we're  
09:17:25 4 lawyers.

09:17:25 5 MS. DOUGLAS: Yes, sir.

09:17:26 6 MR. ORR: Yes, sir.

09:17:31 7 Q. (BY MR. ORR) Okay. To the best of your knowledge, Loretta  
09:17:34 8 does not have a -- excuse me, Ms. Garcia does not have a felony  
09:17:38 9 conviction, correct?

09:17:39 10 A. Correct. She don't.

09:17:40 11 Q. But she may have a misdemeanor conviction for theft?

09:17:43 12 A. She might have. Yes.

09:17:45 13 Q. I pass the witness. Thank you, ma'am.

09:17:55 14 MR. SPARKS: No questions, your Honor.

09:17:56 15 THE COURT: All right. May this witness be excused,  
09:17:58 16 also, counsel?

09:18:00 17 MR. SPARKS: Yes, your Honor.

09:18:05 18 THE COURT: You may be excused, ma'am.

09:18:06 19 MR. ORR: We rest, your Honor.

09:18:15 20 MS. DOUGLAS: Government closes, your Honor.

09:18:18 21 THE COURT: Members of the jury --

09:18:20 22 MS. DOUGLAS: We don't have any rebuttal.

09:18:21 23 THE COURT: I am going to put you in the jury room for  
09:18:23 24 just a moment.

09:18:49 25 (Jury not present.)

09:18:53 1 THE COURT: Does the government have any rebuttal?

09:18:55 2 MS. DOUGLAS: No. We do not, your Honor.

09:18:56 3 THE COURT: All right.

09:18:57 4 MR. ORR: We close, I guess.

09:18:58 5 THE COURT: Okay.

09:18:59 6 MR. ORR: We're ready.

09:19:01 7 THE COURT: Everybody's closed but you need to renew

09:19:03 8 your --

09:19:04 9 MR. ORR: I was about to do that. Yes, we renew our

09:19:07 10 motion for judgment of acquittal under Federal Rule of Criminal

09:19:10 11 Procedure 29, your Honor, on the basis of insufficient evidence.

09:19:13 12 THE COURT: And the objection and motion is overruled.

09:19:19 13 Are you ready for that? All right. John, tell the

09:19:29 14 jury that we'll be recessed for at least 30 minutes, to be ready

09:19:33 15 to come back in 30 minutes.

09:19:37 16 COURT SECURITY OFFICER: Yes, sir.

09:19:37 17 THE COURT: I'll have the Court's proposed charge to

09:19:43 18 you in a minute or two.

09:19:45 19 How long do you wish to argue, Ms. Douglas?

09:19:48 20 MS. DOUGLAS: May we get 20 minutes, your Honor?

09:19:50 21 THE COURT: Sure. I don't ever limit argument. I

09:19:53 22 usually recommend to the lawyers not to take more than 30. But

09:19:59 23 20 minutes is fine.

09:20:01 24 MR. SPARKS: Can we have 30, just in case, your Honor?

09:20:05 25 We'll try to use that judiciously.

09:20:07 1 THE COURT: It took you -- so you want -- I don't care.  
09:20:12 2 Take 30 if you want.

09:20:14 3 MR. ORR: I want whatever they want, your Honor. I  
09:20:16 4 probably won't use it. But I think the jury gets enough of me in  
09:20:20 5 15 to 20 minutes.

09:20:21 6 THE COURT: We haven't had a whole lot of evidence to  
09:20:23 7 talk about in 30 minutes, but you can take 30 minutes.

09:42:32 8 (Recess.)

09:42:41 9 THE COURT: Ms. Douglas, have you had an opportunity to  
09:42:43 10 review the proposed instructions to the jury?

09:42:46 11 MS. DOUGLAS: Yes, your Honor.

09:42:46 12 THE COURT: I'll take your objections, comments or  
09:42:48 13 observations at this time.

09:42:49 14 MS. DOUGLAS: No objections from the government. The  
09:42:51 15 charge is fine, your Honor.

09:42:53 16 THE COURT: Mr. Orr.

09:42:53 17 MR. ORR: Your Honor, I have reviewed it and, more  
09:42:55 18 importantly, Mr. Crawford has reviewed it, and we have no  
09:42:57 19 objections.

09:43:00 20 THE COURT: Do y'all need to take a short break before  
09:43:03 21 we start?

09:43:04 22 MS. DOUGLAS: We're ready, your Honor.

09:43:05 23 MR. ORR: Sure. We're ready.

09:43:06 24 THE COURT: See if they're ready.

09:43:58 25 (Jury present.)



09:45:16 1 THE COURT: Members of the jury, I'm going to read to  
09:45:20 2 you the legal instructions I've prepared in the case. The  
09:45:23 3 lawyers have copies of the legal instructions and are entitled to  
09:45:27 4 comment upon them. So just sit back and listen. I will give it  
09:45:33 5 to you in writing. You'll have it in your jury room at the time  
09:45:37 6 you deliberate.

09:45:40 7 Members of the jury, you've heard all the evidence in  
09:45:42 8 the case. And I will now instruct you on the rules of law you  
09:45:46 9 must follow and apply in arriving at your decision in the case.  
09:45:50 10 After I read these instructions, the lawyers will have the right  
09:45:53 11 to make their final presentation, and thereafter, you will begin  
09:45:56 12 deliberation.

09:45:57 13 In a jury trial there are, in effect, two judges. The  
09:46:02 14 Court is one of the judges and you are the other. It is my duty  
09:46:05 15 to preside over the trial and to determine what evidence is  
09:46:07 16 relevant under the law for your consideration. It is also my  
09:46:12 17 duty at the end of the trial to instruct you on the law  
09:46:15 18 applicable to the case.

09:46:16 19 You, as jurors, are the judges of the facts. But in  
09:46:20 20 determining what actually happened, that is, in reaching your  
09:46:22 21 decision as to the facts, it is your sworn duty to follow all of  
09:46:26 22 the rules of law as I explain them to you.

09:46:28 23 You have no right to disregard or give special  
09:46:31 24 attention to any one instruction or to question the wisdom or the  
09:46:35 25 correctness of any rule I may state to you. You may not

09:46:39 1 substitute or follow your own notion or opinion as to what the  
09:46:43 2 law is or ought to be. It is your duty to apply the law as I  
09:46:47 3 explain it to you, regardless of the consequences.

09:46:50 4 It is also your duty to base your verdict solely upon  
09:46:53 5 the evidence, without prejudice or sympathy. That was the  
09:46:57 6 promise you made and the oath that you took before being accepted  
09:47:01 7 by the parties as jurors, and the parties have the right to  
09:47:05 8 expect nothing less.

09:47:07 9 The defendant, Arthur Langoria, has been charged with  
09:47:09 10 possession of a firearm by a convicted felon, in violation of  
09:47:14 11 Title 18, United States Code, Section 922(g)(1).

09:47:18 12 This is a federal violation. The indictment is simply  
09:47:22 13 the description of the formal charge made by the government  
09:47:25 14 against the defendant; it is not evidence of guilt. Indeed, the  
09:47:29 15 law presumes the defendant to be innocent.

09:47:32 16 The presumption of innocence means a defendant starts  
09:47:34 17 the trial with a clean slate. You must presume a defendant is  
09:47:38 18 innocent throughout your deliberations until such time, if ever,  
09:47:43 19 you, as a jury, are satisfied that the government has proved the  
09:47:46 20 defendant guilty beyond a reasonable doubt. Unless you are  
09:47:51 21 satisfied beyond a reasonable doubt that the defendant is guilty,  
09:47:53 22 the presumption alone is sufficient to find the defendant not  
09:47:57 23 guilty. In other words, the law does not require a defendant to  
09:48:01 24 prove his innocence or produce any evidence at all. The  
09:48:04 25 government has the burden of proving each defendant guilty beyond

1 a reasonable doubt on the charge, and if it fails to do so, you  
2 must acquit the defendant on that charge.

3 While the government's burden of proof is a strict or  
4 heavy burden, the defendant's guilt does not need to be proved  
5 beyond all doubt. It is only required that the government's  
6 proof exclude any reasonable doubt concerning the defendant's  
7 guilt. A reasonable doubt is a doubt based upon common and --  
8 based upon reason and common sense, after careful and impartial  
9 consideration of all the evidence in the case. Proof beyond a  
10 reasonable doubt, therefore, is proof of such a convincing  
11 character that you would be willing to rely and act upon it  
12 without hesitation in the most important of your own affairs.

13 In determining the facts, you must consider only the  
14 evidence presented during the trial, including the sworn  
15 testimony of the witnesses, exhibits, and any stipulations  
16 entered by the parties. Your determination must be based solely  
17 on the legally admissible evidence and testimony. Remember that  
18 any statements, objections, or arguments made by the lawyers are  
19 not evidence. The function of the lawyers is to point out those  
20 things that are most significant or helpful to their side of the  
21 case, and in doing so, to call your attention to certain facts or  
22 inferences that might otherwise escape your notice. In the final  
23 analysis, however, it is your own recollection and interpretation  
24 of the evidence that controls in the case. What the lawyers say  
25 is not binding on you.

09:49:44 1 During the trial, I have sustained objections to  
09:49:46 2 certain questions and exhibits. You must disregard those  
09:49:51 3 questions and exhibits entirely. Do not speculate as to what the  
09:49:54 4 witness would have said if permitted to answer the question or as  
09:49:57 5 to the contents of the exhibit.

09:50:00 6 Also, do not assume that from anything that I may have  
09:50:04 7 done or said during the trial that I have any opinion concerning  
09:50:08 8 any of the issues in this case. Except for the instructions to  
09:50:11 9 you on the law, you should disregard anything I may have said  
09:50:14 10 during the trial in arriving at your own findings as to the guilt  
09:50:18 11 or innocence of the defendant.

09:50:20 12 While you should consider only the evidence in the  
09:50:23 13 case, you're permitted to draw reasonable inferences from the  
09:50:27 14 testimony and the exhibits as you feel are justified in the light  
09:50:30 15 of common experience. In other words, you may make deductions  
09:50:34 16 and reach conclusions that reason and common sense lead you to  
09:50:39 17 draw from the facts that have been established by the testimony  
09:50:43 18 and the evidence in the case.

09:50:45 19 In considering the evidence, you should not be  
09:50:48 20 concerned whether the evidence is direct evidence or  
09:50:50 21 circumstantial evidence. Direct evidence is the testimony of one  
09:50:55 22 who asserts actual knowledge of a fact, such as an eyewitness.  
09:51:00 23 Circumstantial evidence is a proof of a chain of facts or  
09:51:04 24 circumstances indicating that the defendant is either guilty or  
09:51:07 25 not guilty. The law makes no distinction between the weight you

09:51:11 1 may give to either direct or circumstantial evidence.

09:51:16 2 I remind you that it is your job to decide whether the  
09:51:19 3 government has proved the guilt of the defendant beyond a  
09:51:23 4 reasonable doubt. And in doing so, you must consider all of the  
09:51:25 5 evidence. This does not mean, however, that you must accept all  
09:51:29 6 the evidence as true or accurate.

09:51:32 7 You're the sole judges of the credibility or the  
09:51:35 8 believability of each witness and the weight to be given the  
09:51:38 9 witness' testimony. An important part of your job will be making  
09:51:42 10 judgments of the testimony of the witnesses who did testify in  
09:51:45 11 the case. You should decide whether you believe what each person  
09:51:49 12 had to say, and how important that testimony was. In making that  
09:51:54 13 decision, I suggest that you ask yourself a few questions: Did  
09:51:58 14 the person impress you as honest? Did the witness have any  
09:52:02 15 particular reason not to tell the truth? Did the witness have a  
09:52:05 16 personal interest in the outcome of the case? Did the witness  
09:52:09 17 have any relationship with either the government or the defense?  
09:52:13 18 Did the witness seem to have a good memory? Did the witness have  
09:52:16 19 the opportunity and ability to understand the questions clearly  
09:52:20 20 and answer them directly? Did the witness' testimony differ from  
09:52:24 21 the testimony of other witnesses? These are a few of the  
09:52:29 22 considerations that may help you to determine the accuracy of  
09:52:32 23 what each witness said.

09:52:35 24 In this case, the government called as witnesses law  
09:52:37 25 enforcement officers or agents. You are instructed the testimony

1 of a member of law enforcement should be weighed and his  
2 credibility evaluated in the same way as that of any other  
3 witnesses. The status of a witness as a law enforcement officer  
4 is not to be considered in weighing the credibility of that  
5 witness.

6 During the trial, you've heard the testimony of David  
7 Berryhill and Daniel Jones, who expressed opinions concerning  
8 firearms. If scientific, technical, or other specialized  
9 knowledge might assist the jury in understanding the evidence or  
10 in determining a fact in issue, a witness qualified by knowledge,  
11 skill, experience, training, or education may testify and may  
12 state an opinion concerning such matters. Merely because such a  
13 witness has expressed an opinion does not mean, however, that you  
14 must accept the opinion. You should judge such testimony like  
15 any other testimony. You may accept it or reject it, and give it  
16 as much weight as you think it deserves, considering the witness'  
17 education and experience, the soundness of the reasons given for  
18 the opinion, and all other evidence in the case.

19 You must always bear in mind that the law never imposes  
20 upon a defendant in a criminal case the burden or duty of calling  
21 witnesses or producing any evidence. The defendant has a right  
22 not to testify in a criminal case, and his choice not to testify  
23 should not be considered as evidence of guilt or innocence.

24 Furthermore, I caution you, members of the jury, that  
25 you're here to determine the guilt or innocence of the defendant

1 in the crime charged from the evidence in the case. The  
2 defendant is not on trial for any act, conduct, or offense not  
3 alleged in the indictment. Neither are you called upon to return  
4 a verdict as to the guilt or innocence of any other person or  
5 persons not on trial as a defendant in this case.

6 Finally, the punishment provided by law for the offense  
7 charged in the indictment is a matter exclusively within the  
8 province of the Court. If the defendant is found guilty, it will  
9 be my duty to decide what the punishment will be. You should not  
10 be concerned with punishment in any way in arriving at an  
11 impartial verdict as to the guilt or innocence of the defendant,  
12 and it should not enter into your consideration or discussion.

13 Now that I have given you your general duties as  
14 jurors, I will instruct you on the law in the case.

15 You're instructed that Travis County, Texas, lies  
16 within the Western District of Texas.

17 You will note that the indictment charges the offense  
18 was committed on or about specific dates. You're instructed the  
19 government does not have to prove the crime was committed on that  
20 exact date, so long as the government proves beyond a reasonable  
21 doubt the defendant committed the crime on a date reasonably near  
22 the date stated in the indictment.

23 The term knowingly as used in these instructions means  
24 the act was done voluntarily and intentionally and not because of  
25 mistake or accident. It is reasonable to infer that a person

09:55:50 1 ordinarily intends the natural and probable consequences of his  
09:55:55 2 or her knowing acts. You may draw the inference an accused  
09:56:00 3 intended all of the consequences which one standing in like  
09:56:04 4 circumstances and possessing like knowledge should reasonably  
09:56:08 5 have expected to result from any intentional act or conscious  
09:56:12 6 omission by the defendant.

09:56:14 7 Along with these instructions, you will receive a  
09:56:18 8 verdict form. Answer each question using the following  
09:56:22 9 instructions of the applicable count.

09:56:25 10 Count 1, Possession of a Firearm By a Convicted Felon.  
09:56:28 11 Title 18, United States Code, Section 922(g)(1), makes it a crime  
09:56:34 12 for a convicted felon to possess a firearm.

09:56:45 13 For you to find the defendant guilty of this crime, you  
09:56:47 14 must be convinced that the government has proved each of the  
09:56:51 15 following elements beyond a reasonable doubt:

09:56:54 16 First: That the defendant knowingly possessed a  
09:56:58 17 firearm, specifically, a Hi-Point, Model CF380, .380 caliber,  
09:57:04 18 semiautomatic pistol, Serial No. P870065;

09:57:12 19 Second: That before the defendant possessed the  
09:57:15 20 firearm, the defendant had been convicted in a court of a crime  
09:57:19 21 punishable by imprisonment for a term in excess of one year, that  
09:57:23 22 is, a felony offense; and

09:57:24 23 Third: That the possession of the firearm was  
09:57:26 24 affecting commerce; that is, that before the defendant possessed  
09:57:30 25 the firearm, it had traveled at some point from one state to



09:57:35 1 another.

09:57:36 2           The parties have stipulated that before the defendant  
09:57:40 3 is alleged to have possessed the firearm, Arthur Langoria had  
09:57:44 4 been convicted in a court of a crime punishable by imprisonment  
09:57:48 5 for a term in excess of one year, that is, a felony offense.

09:57:52 6           The term firearm means any weapon that will or is  
09:57:56 7 designed to or may readily be converted to expel a projectile  
09:58:01 8 from the action of an explosive. The term firearm also includes  
09:58:05 9 the frame or receiver of any such weapon, or any firearm muffler  
09:58:11 10 or firearm silencer, or destructive device. The government is  
09:58:14 11 not required to prove the defendant knew the firearm had  
09:58:17 12 previously traveled in interstate commerce.

09:58:20 13           Possession, as that term is used in this case, may be  
09:58:25 14 of two kinds: actual possession or constructive possession. A  
09:58:30 15 person who knowingly has direct, physical control over a thing,  
09:58:35 16 at a given time, is then in actual possession of it. A person  
09:58:40 17 who, although not in actual possession, knowingly has both the  
09:58:45 18 power and the intention, at a given time, to exercise dominion or  
09:58:50 19 control over a thing, either directly or through another person  
09:58:54 20 or persons, is then in constructive possession of it. Possession  
09:58:59 21 may be sole or joint. If one person alone has actual or  
09:59:03 22 constructive possession of a thing, possession is sole. If two  
09:59:08 23 or more persons share actual or constructive possession of a  
09:59:11 24 thing, possession is joint. You may find that the element of  
09:59:16 25 possession, as that term is used in these instructions, is

09:59:19 1 present if you find beyond a reasonable doubt that the defendant  
09:59:24 2 had actual or constructive possession, either alone or jointly  
09:59:29 3 with others.

09:59:31 4 Question 1 asks: Do you find beyond a reasonable doubt  
09:59:34 5 that the defendant, Arthur Langoria, committed the offense of  
09:59:37 6 possession of a firearm by a convicted felon, as charged in Count  
09:59:42 7 1 of the indictment? Answer not guilty or guilty.

09:59:45 8 Your task is to decide whether the government has  
09:59:49 9 proved beyond a reasonable doubt that the defendant committed  
09:59:52 10 this crime. If you find the government has not proved beyond a  
09:59:56 11 reasonable doubt that the defendant is guilty of possession of a  
10:00:00 12 firearm by a convicted felon, as charged in Count 1, answer not  
10:00:03 13 guilty to Question 1 on the verdict form. If you find the  
10:00:07 14 government has proved beyond a reasonable doubt that the  
10:00:10 15 defendant is guilty of possession of a firearm by a convicted  
10:00:14 16 felon, as charged in Count 1, answer guilty to Question 1 on the  
10:00:19 17 verdict form. And you answer no further questions.

10:00:22 18 Any verdict must represent the considered judgment of  
10:00:26 19 each juror. In order to return a verdict, it is necessary that  
10:00:29 20 each juror agree to the verdict. Your verdict must be unanimous  
10:00:34 21 on the count in the indictment. Your deliberations will be  
10:00:37 22 secret. You will never have to explain your verdict to anyone.

10:00:40 23 It is your duty as jurors to consult with one another  
10:00:44 24 and to deliberate in an effort to reach agreement, if you can do  
10:00:47 25 so without violence to your individual judgment. Each of you

10:00:51 1 must decide the case for yourself, but only after an impartial  
10:00:55 2 consideration of the evidence in the case with your fellow  
10:01:01 3 jurors. In the course of your deliberations, you may choose to  
10:01:03 4 reexamine your own views and even change your mind completely  
10:01:06 5 after discussing the evidence with other jurors. However, do not  
10:01:10 6 surrender your honest conviction as to the weight or the effect  
10:01:13 7 of the evidence solely because of the opinion of your fellow  
10:01:16 8 jurors, or for the mere purpose of returning a verdict.

10:01:21 9 Remember at all times that you're not partisans.  
10:01:25 10 You're now judges, judges of the facts, and your duty is to  
10:01:29 11 decide whether the government has proved the defendant guilty  
10:01:32 12 beyond a reasonable doubt.

10:01:34 13 Upon retiring to the jury room, you should first select  
10:01:37 14 one of you to act as your presiding juror, who will preside over  
10:01:41 15 your deliberations and will be your spokesperson here in court.  
10:01:45 16 A verdict form for each defendant has been prepared for your  
10:01:49 17 convenience. You will take the verdict form to the jury room.  
10:01:52 18 When you have reached the unanimous agreement as to your verdict,  
10:01:55 19 the presiding juror will write in the unanimous verdict of the  
10:01:59 20 jury in the spaces provided, and date and sign the form. You  
10:02:03 21 will then return to the courtroom to deliver your verdict.

10:02:07 22 If during your deliberations you should desire to  
10:02:09 23 communicate with the Court, please reduce your message to  
10:02:15 24 writing, signed by the presiding juror, and pass the note to the  
10:02:18 25 court security officer, who will bring it to my attention. I

10:02:22 1 will either answer your question in writing or bring you back to  
10:02:25 2 the courtroom for other verbal instructions. Bear in mind,  
10:02:30 3 however, you are never to reveal to any person, not even the  
10:02:33 4 Court, how the jury stands, numerically or otherwise, on any  
10:02:38 5 count in the indictment, until after you've reached a unanimous  
10:02:41 6 verdict. And a place for my signature to send it to you.

10:02:45 7           The verdict of the jury is simply one page. It says,  
10:02:50 8 do you find beyond a reasonable doubt the defendant, Arthur  
10:02:53 9 Langoria, committed the offense of possession of a firearm by a  
10:02:56 10 convicted felon, as charged in Count 1 of the indictment? You're  
10:03:00 11 to answer "not guilty" or "guilty" there, and have the presiding  
10:03:03 12 juror sign and file it. In addition to these instructions and  
10:03:08 13 the verdict form, you will get a copy of the indictment that was  
10:03:12 14 read to you at the beginning of this trial and a copy of all of  
10:03:18 15 the exhibits.

10:03:20 16           I permitted each of the parties to speak for 30 minutes  
10:03:27 17 if they need to. They could use all 30 minutes. If they don't,  
10:03:31 18 they're going to give you some time back. But before we start  
10:03:34 19 with that, then, I think what I'll do is -- because that will be  
10:03:38 20 a good hour of listening, I'm going to let you get into a short  
10:03:43 21 break, use the facilities, stretch, get your mind clear and then,  
10:03:47 22 come back, ready to listen to the lawyers.

10:03:49 23           There are two things, in addition, I want to tell you.  
10:03:53 24 Sometimes it's necessary to ask a question or send a comment to  
10:03:56 25 the Court. Let me tell you, the procedure I have to do is I stop

10:04:00 1 whatever I'm doing, I call the parties back in the courtroom. I  
10:04:06 2 could be upstairs doing some other stuff, and so, it may take  
10:04:10 3 some time. The parties then are allowed to review what you have  
10:04:15 4 written, and will advise me and suggest how I should answer it,  
10:04:21 5 and then, I will answer it generally in writing. The point is,  
10:04:26 6 it takes time. Never stop your deliberations. Continue to  
10:04:31 7 deliberate. Many times, that question becomes unimportant later  
10:04:37 8 on.

10:04:38 9           The second is, you're to deliberate only when 12 of you  
10:04:42 10 are present. If you want to take a break, and somebody wants to  
10:04:45 11 go outside, or somebody wants to go to the restroom, everybody  
10:04:48 12 stops talking about the case until the 12 of you are back so that  
10:04:53 13 each one hears everything that is said.

10:04:58 14           The time will be yours. If you decide to take a lunch  
10:05:03 15 break, I need for you to write that you're going to be gone from  
10:05:10 16 12:00 to 1:15, or whatever time it will be, so that I can have  
10:05:17 17 the courthouse ready for you when you return. You do not have to  
10:05:21 18 leave. You're welcome to stay in the jury room, if you prefer to  
10:05:27 19 stay in the jury room, rather than to go to lunch. If you decide  
10:05:30 20 to go to lunch -- you don't have to go to lunch -- you're going  
10:05:33 21 to be in charge of your own time from now, only I just need to  
10:05:36 22 know what is the desire of the jury.

10:05:43 23           Okay. Give you a short break.

10:06:32 24           (Recess.)

10:14:20 25           MR. SPARKS: Thank you, your Honor.

10:14:21 1 THE COURT: Mr. Sparks, you have the lectern.

10:14:24 2 GOVERNMENT'S CLOSING STATEMENTS

10:14:25 3 MR. SPARKS: Mr. Orr, Mr. Crawford.

10:14:27 4 Ladies and gentlemen of the jury, yesterday and, I  
10:14:33 5 suppose, this morning, I found myself thinking -- trying to get  
10:14:40 6 -- trying to predict what was going through your minds as you  
10:14:43 7 drove downtown and got drawn into jury service for potentially  
10:14:48 8 being on a jury. And sometimes the lawyers -- at least I know I  
10:14:52 9 do this. I'll try to -- I'll tend to stare over at the jurors  
10:14:55 10 and try to peek into your minds and see if I can read you, and I  
10:14:59 11 could tell you that you've got pretty good poker faces, and you  
10:15:03 12 don't tend to show your cards much.

10:15:07 13 I can tell you what I imagine. I imagine you starting  
10:15:13 14 your day, knowing you're coming to Austin, coordinating with your  
10:15:18 15 respective maybe spouses, your children, your -- some of your  
10:15:23 16 spoiled pets, just basically tending to all your normal  
10:15:29 17 day-to-day responsibilities, coordinating with your work, your  
10:15:32 18 job, your household, all these things. Some of you or several of  
10:15:37 19 you may have even done as Judge Sparks mentioned and tuned into  
10:15:42 20 the Olympics the night before last night and seeing these --  
10:15:48 21 really, these inspirational not only stories but performances  
10:15:52 22 that were based on hard work, commitment, dedication,  
10:16:00 23 accountability. Really, the world -- well, the world, the United  
10:16:05 24 States is watching, and these athletes go out there and perform.  
10:16:10 25 At some level, possibly to you, they are accountable if they fall

10:16:14 1 short of the mark, alls they can really do is look in the camera  
10:16:17 2 or in the mirror and just sort of accept they went out there and  
10:16:21 3 did their best.

10:16:22 4 And so, I got to think about that and what a contrast  
10:16:28 5 we've got from what some of you may have tuned into to what  
10:16:32 6 you've tuned into over the past two days. You tuned into the  
10:16:36 7 Arthur Longoria show, and the game he plays is strikingly  
10:16:41 8 different. It's a game of deceit, it's a game of proactive  
10:16:48 9 avoidance of responsibility. And what did Arthur Longoria do?  
10:16:53 10 He did a couple of things that we know, and I'm not going to  
10:16:55 11 regurgitate all of them but just some things that he proactively  
10:17:01 12 did.

10:17:01 13 He had a cleanup effort that was maybe worthy of a  
10:17:10 14 medal, if one were given, for the type of game he's playing. He  
10:17:15 15 goes to David Lee and tries to get him to sign some sort of  
10:17:21 16 paper, presumably placing blame for the possession of the firearm  
10:17:27 17 on somebody else. What else does he do? Well, he's smart  
10:17:32 18 enough, at least in the interview with the officer, to avoid  
10:17:37 19 responsibility. And he's smart enough, convicted felon, to fudge  
10:17:42 20 and say, well, those were for -- and this is months, months  
10:17:47 21 later. Those firearms were for my wife's birthday. So he fudges  
10:17:52 22 there a little bit. Those items, I submit to you, are  
10:17:57 23 circumstantial evidence of his knowledge. He knows he can't  
10:18:00 24 possess a gun; that's why he's going -- proactively driving  
10:18:04 25 wherever the Jiffy Lube is to where David Lee works to get him to

10:18:07 1 sign whatever this piece of paper says, deliberately saying when  
10:18:12 2 he says on the interview because he knows as a convicted felon,  
10:18:15 3 he can't have a firearm. That is circumstantial evidence.

10:18:20 4 And then, you know, he stoops low enough to try to put  
10:18:24 5 on his wife, Loretta Garcia-Longoria. I'd submit to you that the  
10:18:28 6 defense has an equal right to -- where is Loretta Garcia? They  
10:18:33 7 have a right to subpoena witnesses. Where is she? Presumably,  
10:18:37 8 they have at least an equal, or maybe a greater, access to  
10:18:42 9 someone that is the defendant's spouse to get her here and tell  
10:18:46 10 you what, you know, allegedly she's going to say.

10:18:52 11 Now, and I say that not to be confrontational on this  
10:18:56 12 side of the table. Mr. Orr and Mr. Crawford are gentlemen  
10:19:00 13 lawyers. I don't begrudge the decisions they make in calling a  
10:19:04 14 witness, not calling a witness. You've observed our interaction  
10:19:08 15 with one another. It's courteous, it's respectful. Sometimes it  
10:19:15 16 may seem, as you watched us, a little lighthearted, but maybe  
10:19:21 17 that's gallows humor for the type of work we're in. But make no  
10:19:25 18 mistake about this case, it's about possession, but it's also --  
10:19:28 19 it's about public safety. And the question -- the obvious  
10:19:33 20 question is, do we want a convicted felon to possess this type of  
10:19:39 21 a weapon?

10:19:44 22 It's not an antigun case. It's not an antigun case.  
10:19:49 23 Many of you may be just as excited as others about opening day of  
10:19:56 24 hunting season. It's not an antigun case. It's an  
10:20:05 25 anti-felon-in-possession case. It's really just as simple as



10:20:15 1 that. We've got Mr. Longoria admitting actual possession. We've  
10:20:20 2 got him in constructive possession in the bedroom of his home.  
10:20:24 3 The uncontroverted evidence from Mr. Lee is that he sold the gun  
10:20:28 4 directly to Arthur Longoria. So the question becomes, is Lee  
10:20:32 5 credible?

10:20:34 6 Just a few observations. Mr. Lee was unwavering in his  
10:20:38 7 testimony on direct and on cross. He has -- I'll submit to you  
10:20:44 8 he has no axe to grind with Mr. Longoria. He tried -- in fact,  
10:20:48 9 he tried to mitigate things a little bit with Detective Skolaut.  
10:20:54 10 Ultimately, he came out and told the ugly truth. He didn't want  
10:20:59 11 to do that. They were friends. You heard from the defense  
10:21:04 12 witness that he even stayed in the home for several weeks. This  
10:21:09 13 was an uncomfortable position for him to be in, but he came in  
10:21:13 14 and did the right thing. He picked him out of a lineup. He just  
10:21:19 15 as easily, I submit to you, could have said that he sold the guns  
10:21:23 16 to Loretta. Would law enforcement have been any the wiser? He  
10:21:28 17 could have easily done that; but instead, he came in -- and I  
10:21:31 18 submit to you, he's a credible witness. He came in and told the  
10:21:35 19 truth. But I guess, more importantly, is the word -- are the  
10:21:41 20 words of Arthur Longoria, himself. He admits possessing the  
10:21:46 21 firearms on videotape. He hedges a little. He fudges a little.

10:21:53 22 A couple of questions, then I'm going sit down and Ms.  
10:21:56 23 Douglas is going to speak to you, and Mr. Orr and Mr. Crawford  
10:21:59 24 will, as well.

10:22:01 25 When you keep a gun under your bed, near your safe, and

10:22:06 1 \$1,500 in your wallet, who do we really think possessed that? Is  
10:22:12 2 it is the wife that Arthur Longoria tells you didn't even know  
10:22:14 3 how to shoot it, yet, they were intending to go out and have  
10:22:17 4 lessons? Those are Arthur Longoria. On the interview tape, if  
10:22:22 5 we're going to scrutinize credibility in every case, you need to  
10:22:24 6 scrutinize the witnesses and the evidence. The evidence here I'm  
10:22:29 7 referring to is the videotaped statement of Arthur Longoria. He  
10:22:32 8 says the firearm's there for home protection. Home protection,  
10:22:38 9 you know, that's not a defense to actual or constructive  
10:22:43 10 possession of a firearm by a felon.

10:22:46 11 Will it be important to some of you that, you know, he  
10:22:50 12 had it for home protection? I don't know. I doubt it. But if  
10:22:56 13 he's so concerned about home protection, couldn't he have perhaps  
10:23:00 14 taken that \$1,500 in his wallet and maybe 150 to 200-plus that he  
10:23:05 15 paid over to David Lee, invest it in a security system? He could  
10:23:10 16 probably buy himself a pretty decent alarm system and bar some  
10:23:15 17 doors and windows for that amount of money. I submit to you  
10:23:18 18 that's not what he was doing. He intentionally, knowingly  
10:23:21 19 possessed the firearm. Thank you.

10:23:25 20 THE COURT: Mr. Orr.

10:23:29 21 DEFENDANT'S CLOSING STATEMENTS

10:23:31 22 MR. ORR: Your Honor, may it please the Court.

10:23:33 23 Ladies and gentlemen of the jury, Mr. Sparks, Ms.  
10:23:35 24 Douglas, this trial's been pretty short, shorter than we thought,  
10:23:41 25 mercifully for you. The lawyers here, we always enjoy being in

10:23:45 1 trial and it's always -- it's a pleasure being in trial with Mr.  
10:23:48 2 Sparks and Ms. Douglas. As he noted, they're very courteous and  
10:23:53 3 I'm sometimes a little bit of a jerk, but I've been doing this a  
10:23:57 4 long time and I just can't help it sometimes. I'm a lawyer, what  
10:23:59 5 do you want? Doing the best I can do to be a real person.

10:24:02 6 But what I want y'all to do here is look at the  
10:24:06 7 evidence, and I want you to consider the indictment, consider the  
10:24:11 8 Court's charge, and you decide if the government has proven the  
10:24:15 9 allegations of the indictment that the federal grand jury  
10:24:18 10 returned against Mr. Longoria, beyond a reasonable doubt, and if  
10:24:21 11 they've done it within the terms of the charge the Judge just  
10:24:24 12 read to y'all a few minutes ago.

10:24:28 13 And as you go through all this, as the Judge and Mr.  
10:24:32 14 Sparks tell you, you're entitled to believe some of the witness'  
10:24:35 15 testimony, all of it, or none of it. So you've heard testimony  
10:24:40 16 from Mr. Lee, you've heard from Detective Skolaut, you've heard a  
10:24:45 17 couple of defense witnesses. You've heard the statement of Mr.  
10:24:48 18 Longoria when he was talking to the police. You heard -- gee, I  
10:24:56 19 don't remember all the witnesses, all the rest of them. Whatever  
10:24:59 20 -- not very many witnesses. But you have 12 recollections, 12  
10:25:03 21 minds, 12 memories over there to remember all the witnesses and  
10:25:06 22 what they said.

10:25:07 23 But first, let's look at the indictment, and it charges  
10:25:12 24 that on or about December 4th, 2007, that Mr. Longoria, convicted  
10:25:18 25 of a crime punishable by imprisonment for a term exceeding one

10:25:21 1 year, which he stipulated to that, did knowingly possess in and  
10:25:24 2 affecting commerce a firearm, and that's the .380 that's in  
10:25:28 3 evidence here. He's not charged with a shotgun. And then, the  
10:25:33 4 Court says that he's in violation of 18 United States Code,  
10:25:39 5 Section 922(g), some legal language that needs to be in there you  
10:25:43 6 don't need to concern yourselves about. But let's look at how  
10:25:46 7 all this came down. Just look at the overall case here.

10:25:51 8 That is that on December the 4th of last year, a raid  
10:25:55 9 was conducted at the residence of Loretta Garcia, some other  
10:26:01 10 people, and Arthur Longoria. The police there find a couple of  
10:26:09 11 firearms. They found the shotgun, they found the .380. The  
10:26:13 12 .380's under the bed. The shotgun is in the gun safe. And they  
10:26:19 13 then do a firearms check and conclude that the .380, at least,  
10:26:25 14 comes -- was purchased by Jonathan David Lee. And I didn't hear  
10:26:30 15 any testimony about a firearms check on the shotgun. And Mr. Lee  
10:26:35 16 told you about selling a .410 shotgun. And you heard the  
10:26:39 17 testimony about how a .410 does not look like a 12-gauge.

10:26:45 18 And I'm going to guess that being Texas that at least  
10:26:49 19 some of y'all know the difference between a .410 and a 12-gauge.  
10:26:55 20 Mr. Lee, I think, even sort of admitted that maybe -- I mean one  
10:26:59 21 of his versions of his testimony that the .380 was for Loretta  
10:27:03 22 Garcia. And he tried to say the .410, I think, was maybe for Mr.  
10:27:14 23 Longoria, but that's not it. It's not there. Where is this .410  
10:27:17 24 he claims he sold? Where's the firearms trace on the 12-gauge?

10:27:22 25 And if you remember when the officers, Detective

10:27:26 1 Balderama, that's another one, when he was asking Mr. Longoria  
10:27:30 2 about the firearms, he seemed to be talking about the .410 and  
10:27:35 3 the .380. The guns he's mentioning, he's asking, where did you  
10:27:40 4 get them? Mr. Longoria says Jonathan David Lee. Well, he says  
10:27:45 5 "Tater." He identifies as "Tater" sold them to Loretta. Loretta  
10:27:50 6 bought it. There's something very strange going on here. I  
10:27:56 7 don't know if it's confusion, but the officer, I think, is asking  
10:28:00 8 about the .410. You'll have the tape. At least Mr. Longoria's  
10:28:04 9 talking to him about a .410 that Loretta purchased. But there  
10:28:08 10 was no .410 found. And at no point does the officer say, wait,  
10:28:13 11 wait, wait .410, what about a .410? What about the 12-gauge that  
10:28:20 12 was in there?

10:28:21 13 Because if you remember, I was asking sequences. When  
10:28:24 14 did things happen? Because at the time that Mr. Longoria was  
10:28:29 15 interviewed on May the 2nd, the police had already talked to  
10:28:35 16 Jonathan David Lee and already had the firearms trace on the  
10:28:38 17 .380, but they didn't have a firearms trace on a .410 because no  
10:28:43 18 .410 was found. But if they did one on the 12-gauge, we  
10:28:50 19 certainly haven't heard about it. So I'm really -- I'm confused  
10:28:59 20 about what's the story of Mr. Lee? If he sold a .410 and a .380  
10:29:08 21 in August, what happened to the .410?

10:29:12 22 Now, you notice in the indictment Mr. Longoria's  
10:29:14 23 charged with possession on December the 4th of '07. In the  
10:29:24 24 Court's charge does tell you that you will note the indictment  
10:29:33 25 charges the offense was committed on or about specific dates.

10:29:36 1 You are instructed the government does not have to prove the  
10:29:38 2 crime was committed on that exact date, so long as the government  
10:29:42 3 proves beyond a reasonable doubt the defendant committed the  
10:29:45 4 crime on a date, reasonably near the date stated in the  
10:29:48 5 indictment.

10:29:50 6 Now, that's for you to decide what's reasonably near.  
10:29:54 7 And so, the police asked Mr. Longoria, they say, well, did you  
10:29:59 8 buy the gun? No. Loretta bought the gun. They tried to get him  
10:30:02 9 several times to say that he bought the guns. He's not charged  
10:30:05 10 with buying guns, he's charged with possessing guns, but they try  
10:30:08 11 to get him to say that, and he didn't say that. He did -- the  
10:30:11 12 officer said, well, I want you to tell me the truth. Did you  
10:30:13 13 possess the guns? Did you hand -- you know, he said, well, yeah,  
10:30:17 14 I did handle the guns, but he didn't tell you when. He doesn't  
10:30:21 15 say, on December the 4th of 2007, I handled the guns. Who knows  
10:30:26 16 when that was, if it even happened. Who knows what handle means.  
10:30:31 17 And it's up to you to decide even if you believe, in fact, he  
10:30:34 18 handled the guns, does that amount to possession under the  
10:30:38 19 Court's charge?

10:30:40 20 Now, we've proven a couple of things here is that  
10:30:44 21 Loretta Garcia does not have a prior conviction. She could have  
10:30:48 22 a gun. She could have all the guns she wants. And the  
10:30:52 23 government says, well, why isn't she here? Why didn't these  
10:30:56 24 lawyers bring her here? Well, do you remember the raid on  
10:30:59 25 December the 4th, 2007? Think about all the stuff that you've

10:31:02 1 heard. And sometimes people don't want to come to federal court.  
10:31:06 2 They don't want to be here. They may have their own reasons for  
10:31:09 3 not wanting to be here.

10:31:13 4 So the government through its officers and agents and  
10:31:24 5 the Austin Police Department, they make a -- they do a raid on  
10:31:28 6 December the 4th of last year. They find some guns. They find  
10:31:32 7 several people. And there's pictures of the other people that  
10:31:34 8 were arrested or detained in that place because they took their  
10:31:37 9 pictures in that apartment on that date. So some months later,  
10:31:42 10 from December to March, I think it was maybe March 13th, but  
10:31:47 11 you'll probably remember it better than I do.

10:31:49 12 Detective Skolaut goes and finds -- based on the  
10:31:51 13 firearms trace, he finds Jonathan David Lee. And so, what does  
10:31:57 14 he do with Mr. Lee? He shows him what's been marked as  
10:32:00 15 Government's Exhibit 3. And what is Government's Exhibit 3?  
10:32:07 16 It's six mugshots, including Mr. Longoria's.

10:32:16 17 Now, let's think about how fair all this is. Now,  
10:32:19 18 supposedly, Mr. Lee knows Mr. Longoria and I think he does. I  
10:32:22 19 think they're, you know, at least -- I don't know if they were  
10:32:25 20 friends, but they sure know each other. And Mr. Lee, for  
10:32:29 21 whatever reason, is minimizing or covering that up. Okay. And  
10:32:36 22 so, here's this deal. Here you are. They find in a raid, they  
10:32:42 23 find some guns, they find a guy there that's -- one person's  
10:32:45 24 convicted of a felony, Loretta Garcia is not. Loretta Garcia can  
10:32:51 25 have guns. Convicted felon can't have guns. That's the case.

10:32:55 1 That's some statistics. That's what we hope -- what they hope is  
10:32:58 2 going to be a conviction.

10:32:59 3 So what do you do? You go out and talk to a guy, and  
10:33:02 4 you show him a photo lineup where the proposed defendant is in  
10:33:10 5 his little jail jumpsuit, along with everybody else in jail  
10:33:14 6 jumpsuits, and of course, he's going to know the guy. I think,  
10:33:18 7 you know, who knows what the exact details of that conversation  
10:33:21 8 were, but don't you think this sends a message to "Tater"? Don't  
10:33:26 9 you think putting this man in a jail jumpsuit and a mugshot and  
10:33:32 10 showing it to somebody sends a message? Yeah, this is the guy we  
10:33:36 11 want.

10:33:40 12 And I'm sure "Tater" wasn't too excited about  
10:33:43 13 cooperating with the government, but for his own reasons,  
10:33:48 14 whatever they may be, buying and selling guns, or whatever  
10:33:53 15 reason, because he finally said remember -- he and I went back  
10:33:57 16 and forth on cross-exam, then, after lunch, I think it was, the  
10:34:01 17 government brought him back in, he finally fessed up, yeah, I  
10:34:03 18 didn't want to get in trouble. He wasn't doing it because he's a  
10:34:07 19 good citizen. He doesn't want to get in trouble.

10:34:09 20 Now, who knows what it really was what he didn't want  
10:34:11 21 to get in trouble for because he's cagey enough to not fess up.  
10:34:18 22 All he knows is Arthur Longoria, sitting over here behind some  
10:34:24 23 lawyers, next to lawyers, and "Tater's" roaming the streets free,  
10:34:31 24 buying and selling guns, and who knows what he's up to because I  
10:34:35 25 think that you got the idea, at least I hope so, that "Tater" was



10:34:38 1 not what we call a reliable, credible individual. He didn't want  
10:34:45 2 to admit he lied, but clearly he lied. And the government says,  
10:34:50 3 oh, well, he was just trying to help Arthur. I don't think that  
10:34:54 4 "Tater" -- you know, who knows, maybe he was. But the point is  
10:34:57 5 he lied. "Tater" is here to help "Tater." And "Tater" got  
10:35:03 6 influenced, he got the message. He may only be 23, but he's  
10:35:07 7 street smart enough to get the idea when he's shown a photograph  
10:35:10 8 of Arthur Longoria in a jail jumpsuit, oh, I get it, I get it, I  
10:35:16 9 know what I'm supposed to do to get myself out of trouble and  
10:35:23 10 keep myself out of trouble. He may not have been the brightest  
10:35:27 11 bulb in the chandelier, but I think even young "Tater" could  
10:35:31 12 figure that out.

10:35:33 13 So you think you look at the -- you look at all the  
10:35:44 14 evidence here. The government's case rests on the foundation of  
10:35:50 15 "Tater." That's where their case really comes from. That's the  
10:35:55 16 most important part of their case is "Tater," and he's probably  
10:35:58 17 the most unreliable foundation. He's a foundation of sand. The  
10:36:04 18 government has not built their case, not built their house on a  
10:36:09 19 solid foundation. "Tater" can't be believed.

10:36:14 20 Now, yes, Mr. Longoria is in that residence and these  
10:36:19 21 guns are there, so is Loretta. Now if you notice, Detective  
10:36:28 22 Balderama was questioning Mr. Longoria, he says, well, I think  
10:36:33 23 that the shotgun was right next to you. And Mr. Longoria said,  
10:36:38 24 no, it was -- he says they were both in the safe. As far as he  
10:36:42 25 knew, they were both in the safe. And in fact, if I understood

10:36:46 1 the officer's testimony, the shotgun is in the safe and the  
10:36:49 2 .380's under the bed. So the simple truth is, they were both  
10:36:52 3 wrong about where the weapons were, where the firearms were.

10:36:58 4 But because -- I think what Mr. Longoria says on the  
10:37:03 5 tape is, yeah, sometimes I'd go into the safe to get my papers  
10:37:07 6 and I might -- you know, maybe he's having to push it away or do  
10:37:10 7 this, do something like that to get to his stuff. It's a gun  
10:37:14 8 safe, a normal gun safe. Would it have been better and smarter  
10:37:17 9 for him not to have been anywhere on the same block with a  
10:37:21 10 firearm? Well, yeah, I think he understands that now.

10:37:25 11 But what are you going to say to people, what are you  
10:37:28 12 going to say to the wives of people who have a prior felony  
10:37:30 13 conviction, that is, any conviction for anything for which they  
10:37:34 14 got over a year? Are you going to say to them, ma'am, you can't  
10:37:39 15 have a pistol? You can't have a shotgun because we're going to  
10:37:44 16 put your husband in a federal penitentiary if you've got one?  
10:37:47 17 Well, that's basically what you'll be saying if you convict  
10:37:51 18 Arthur Longoria.

10:37:52 19 I mean it's a problem. It's a serious problem with the  
10:37:59 20 kind of crime that we've got on the streets, people need some  
10:38:02 21 protection in their homes. And for Mr. Sparks to stand up here  
10:38:06 22 and tell you, oh, well, he could have got a burglar alarm is  
10:38:13 23 ridiculous. I mean you might ought to have a burglar alarm, but  
10:38:26 24 our Constitution guarantees the right to keep and bear arms, and  
10:38:29 25 the Supreme Court recently reaffirmed that. So anybody who's not

10:38:34 1 convicted of a felony could have a firearm.

10:38:39 2 And he says, well, Loretta hadn't even learned how to  
10:38:42 3 shoot it. Well, I don't think it takes a whole lot of learning  
10:38:46 4 to learn how to shoot a .380. Maybe some, you should go to the  
10:38:54 5 -- you know, that's -- they never went to the firing range. She  
10:38:58 6 never went to learn how to do it. That's how interested they  
10:39:01 7 were in these firearms or how interested he was.

10:39:05 8 Watch carefully Mr. Longoria's videotaped statement,  
10:39:34 9 and if he, in fact, touched the .380, which is what he's charged  
10:39:39 10 for, he shouldn't have done that. He shouldn't probably have  
10:39:44 11 gotten close to -- in order to keep himself out of any trouble so  
10:39:48 12 he doesn't have to be here with lawyers. But the officer, if I  
10:39:54 13 recall the videotape, just asking about the firearms, and Arthur  
10:40:03 14 said, yeah, I handled firearms. And we don't really know if  
10:40:05 15 that's the .380, which is what he's charged with, or a .410, or a  
10:40:10 16 12-gauge, or a BB pistol, or what it all is. I'm exaggerating a  
10:40:14 17 little bit, but lawyers do that.

10:40:19 18 So when you go back in there and you look at all the  
10:40:24 19 pieces of the picture puzzle that the government has tried to put  
10:40:27 20 together for you, if you see some of the pieces don't fit  
10:40:31 21 exactly, or some of them aren't the right color, then you need to  
10:40:35 22 find Arthur Longoria not guilty.

10:40:41 23 We're not here to speculate him into the federal  
10:40:45 24 penitentiary. We're not here to -- the Judge told you beyond a  
10:40:50 25 reasonable doubt and that's proof of a nature -- such a nature

10:40:52 1 that you would rely upon it without hesitance in the most  
10:40:57 2 important of your own personal affairs. So that means it's got  
10:41:00 3 to be pretty serious evidence because we're not here to speculate  
10:41:11 4 and say, well, you know what, I think he did it. I think he  
10:41:16 5 probably did it. Well, if you think he probably did it and  
10:41:20 6 that's it, it's your obligation to say "not guilty" because  
10:41:26 7 probably did it is not proof beyond a reasonable doubt. And I  
10:41:35 8 don't think -- that's probably one of the few things that the  
10:41:36 9 government is not going to argue with me about.

10:41:39 10 Now, in a little while, I'm going to sit down here, and  
10:41:42 11 Ms. Douglas is going to get up here and speak, and I've known her  
10:41:46 12 a long time in state and federal court and she's a good lawyer.  
10:41:54 13 And I'm afraid she's going to talk you into or try -- I know  
10:41:57 14 she's going to try and I hope she doesn't talk you into believing  
10:42:00 15 that the government has proven their case beyond a reasonable  
10:42:02 16 doubt. And they want to win. Lawyers -- we just want to win.  
10:42:06 17 But it's up to you to look at this case and tell the lawyers  
10:42:11 18 whichever, whether it's me or Mr. Sparks and Ms. Douglas, that  
10:42:18 19 you're wrong, and I'm bolted to the other side based on the  
10:42:22 20 evidence.

10:42:22 21 But I'm hoping that you won't just because Ms. Douglas  
10:42:24 22 is eloquent and persuasive. She's very good. You could see her  
10:42:29 23 down at the park over here, talking the bird down out of the  
10:42:34 24 trees. So I'm hoping y'all won't be a bunch of birds. I know  
10:42:39 25 you won't.

10:42:39 1 You know, y'all have really been a very good jury, been  
10:42:42 2 very attentive. I think y'all are really good and I'm not -- I  
10:42:45 3 usually say that, but this time I really mean it. So I'm proud  
10:42:49 4 of y'all. And I'm not proud of the government's case here. I  
10:42:52 5 think it amounts to proof less than proof beyond a reasonable  
10:42:57 6 doubt.

10:43:04 7 Well, I'm going to sit down now. And I'm sure as soon  
10:43:06 8 as I sit down, which always happens, I think of the things that I  
10:43:09 9 didn't think to say. But you've got your 12 memories and you can  
10:43:14 10 remember what all these witnesses said, and you look at it and  
10:43:18 11 you decide. You know, it's very serious stuff for Mr. Longoria.  
10:43:23 12 And I do appreciate your time and your attention. Thank you.

10:43:26 13 THE COURT: Ms. Douglas.

10:43:28 14 MS. DOUGLAS: Thank you.

10:43:29 15 GOVERNMENT'S CLOSING STATEMENTS

10:43:30 16 MS. DOUGLAS: May it please the Court, Mr. Orr, Mr.  
10:43:33 17 Crawford.

10:43:33 18 I will say this, Mr. Orr is a good boost for my ego. I  
10:43:39 19 appreciate all the compliments he's given me. And I have the  
10:43:41 20 most respect for Mr. Orr. As he said, I've known him many years,  
10:43:44 21 and he has an obligation to his client to do the best job he can  
10:43:47 22 in defending him. But I will respectfully disagree with him that  
10:43:51 23 we both just want to win.

10:43:54 24 I want you all to return a verdict of guilty because I  
10:43:57 25 believe the evidence has established that he's guilty. I don't

10:43:59 1 just want to win for some notch on my belt. That's not what I'm  
10:44:04 2 here for. I'm here to see that justice is served. And justice  
10:44:07 3 will be for you to return a verdict of guilty against Arthur  
10:44:10 4 Longoria.

10:44:13 5 I'd like to address a few things that Mr. Orr said in  
10:44:16 6 his closing argument to you, then I'm going to get to what I  
10:44:20 7 believe the main focus should be. He wants to say how artful and  
10:44:26 8 crafty Jonathan Lee is. You all can walk away with your own  
10:44:30 9 impressions. I don't find Jonathan Lee to be this artful, crafty  
10:44:34 10 kind of gentleman. He's made some poor choices in his life, but  
10:44:38 11 the bottom line is when he came in here, he did attempt to  
10:44:42 12 minimize Arthur Longoria's responsibility. And what does that  
10:44:46 13 tell you? They were friends. They were friends for the last two  
10:44:48 14 to three years. He sold him the firearm. He didn't realize it  
10:44:52 15 was against the law. Arthur Longoria knows it's against the law  
10:44:56 16 for him to possess a firearm.

10:44:58 17 And so, when he speaks with Detective Skolaut and he's  
10:45:01 18 like, well, I sold it to him, it might have been for Loretta, but  
10:45:05 19 he came and told you under oath, when I sold it to him, he gave  
10:45:09 20 me the money, he took the firearms, nothing was ever said about  
10:45:13 21 Loretta. When's the first time something gets said about these  
10:45:15 22 are a gift for Loretta? You heard him tell you. After Art's  
10:45:20 23 house was raided, Arthur comes over to where he is at his Jiffy  
10:45:24 24 Lube job and it's like, hey, do you think you can maybe tell them  
10:45:27 25 it was for Loretta's birthday? So take that for whatever you

10:45:31 1 want, but the bottom line is, Jonathan Lee sold them to Arthur  
10:45:37 2 Longoria, and they remained in his possession up until the raid  
10:45:41 3 of his home in December for six months. I believe he said her  
10:45:45 4 birthday's in August so from August all the way through December.  
10:45:48 5 So for four months.

10:45:51 6 He wants to talk about the constitutional rights of  
10:45:53 7 Loretta. That's fine and good. Loretta made a choice. And we  
10:45:59 8 talked about that when we began this trial, when we did opening  
10:46:02 9 statement, we make choices, choices have consequences, and we  
10:46:06 10 have to accept our responsibility for them. You didn't hear from  
10:46:10 11 her that, oh-oh, I didn't know he was a convicted felon, none of  
10:46:13 12 that. So he's a convicted felon, he knows he can't possess a  
10:46:17 13 firearm. They're not able to have a firearm there that he's able  
10:46:20 14 to have access to because I'll show you in the charge that the  
10:46:24 15 Court gave you, nowhere does it say anything about ownership. It  
10:46:28 16 talks about possession.

10:46:30 17 So in Mr. Longoria's mind, he thinks if he says it's  
10:46:34 18 Loretta's, then he gets a free pass. But the law does not  
10:46:37 19 indicate that in the Court's charge that Judge Sparks has given  
10:46:45 20 you all the elements that we're required to prove. And I would  
10:46:48 21 submit to you when you go back in there, your job is somewhat  
10:46:50 22 easy because this hasn't been a case that's been hotly contested  
10:46:54 23 on, well, it's a case of mistaken identity, or this isn't really  
10:46:58 24 a firearm, or any of those things.

10:47:00 25 So when you look through it -- and you'll have your

10:47:09 1 copy back there. But I'm on page 6. It talks about, first, that  
10:47:14 2 the defendant knowingly possessed a firearm, specifically, a  
10:47:17 3 Hi-Point, Model CF380, and it goes on with a serial number, and  
10:47:22 4 it says before this possession, he has been convicted in court of  
10:47:27 5 a felony. He stipulated, so you don't even have to spend any  
10:47:30 6 time thinking about that when you go back and deliberate. That's  
10:47:32 7 stipulated, that's a fact. You can move on.

10:47:35 8 No. 3, that the possession of the firearm was affecting  
10:47:38 9 commerce. That's not been stipulated. There's not been any  
10:47:41 10 evidence that, no, this firearm was really manufactured at some  
10:47:43 11 gunsmith here in Texas. So the only thing you have to focus in  
10:47:47 12 on is whether or not Mr. Longoria possessed this firearm.

10:47:59 13 I want you all to go look at that CD. That's why it's  
10:48:01 14 in evidence. It's a whole 16 minutes. Take some time and look  
10:48:05 15 at it. I've looked at it numerous times. My interpretation of  
10:48:08 16 it is a lot different than Mr. Orr's. I don't believe that Mr.  
10:48:16 17 Longoria's being truthful. And these are my interpretations, but  
10:48:20 18 when he's talking to the police officer about how these firearms  
10:48:23 19 came into his possession, his words are, it was a gift for my  
10:48:29 20 wife for her birthday. Now, you all may not find that to be as  
10:48:33 21 interesting as I do, but the way you word it, it was a gift, that  
10:48:37 22 doesn't imply that wife purchased it. That's just a commonsense  
10:48:41 23 reading of those words. If she had purchased it, he initially  
10:48:44 24 would have been like, my wife bought that. But why did she buy  
10:48:46 25 them? She bought them for her birthday. That's just how I



10:48:49 1 interpret it.

10:48:50 2           So when the officer whose interpretation is the same as  
10:48:53 3 mine says, oh, you bought them for your wife. Then Mr. Longoria  
10:48:57 4 realizes, oh-oh, I'm now putting those in my hands if I say I  
10:49:01 5 bought them for her for her birthday. So then he says, well, she  
10:49:04 6 bought them for herself for her birthday. So I just say that  
10:49:08 7 when you're looking through it, look and see what he means when  
10:49:11 8 he says the things he says and why he says them.

10:49:15 9           Then the next thing I find very interesting, look at  
10:49:19 10 it, when the officer's trying to figure out how we find "Tater,"  
10:49:22 11 why does Arthur Longoria think it's important to minimize that he  
10:49:25 12 knows "Tater"? Because he doesn't want the police officer to go  
10:49:28 13 find him and confirm or refute the story that he's given. He's  
10:49:33 14 like, oh, maybe ten times. I don't know how to reach him. He  
10:49:39 15 knew how to reach him when he wanted to go over there and talk to  
10:49:41 16 him in March. He went right to his place of employment. You  
10:49:44 17 didn't hear him tell the police officer, I don't know his number,  
10:49:46 18 but I know he works at the Jiffy Lube off of Slaughter.

10:49:50 19           Why is he trying to hide later from the place? Because  
10:49:53 20 he knows "Tater's" not going to lie for him. He knows that if  
10:49:56 21 Tater's pinned out, he's going to tell that he sold the firearms  
10:49:59 22 to Arthur Longoria.

10:50:01 23           And finally, Arthur Longoria tells you on that tape  
10:50:07 24 that the guns were always in the safe. Well, we know that's not  
10:50:11 25 true, and we know it's not true because when the police raided

10:50:17 1 that home on December 4th, year 2007, they find the gun and these  
10:50:24 2 pretty intimidating-looking knives. I don't know Loretta, but  
10:50:28 3 they want you to think she's this Angelina Jolie-type lady; she's  
10:50:32 4 using guns and knives and she's protecting the home. That just  
10:50:36 5 flies in the face of reason and common sense.

10:50:43 6 I want to end my closing in talking to you about  
10:51:03 7 choices. The defendant took actions in his life that concluded  
10:51:06 8 with him being a convicted felon. Those are choices he's made,  
10:51:09 9 he has to accept the responsibility for it. He chose to purchase  
10:51:13 10 two firearms from Jonathan Lee. He knew he was a convicted  
10:51:17 11 felon. If he's really just being a great friend, no, I can't buy  
10:51:20 12 your firearms to help you out with rent, but here, I'm going to  
10:51:24 13 loan you 150, have at it. He didn't have to take those firearms.  
10:51:28 14 He chose to keep those firearms in the bedroom where he stayed.

10:51:32 15 His consequences as a convicted felon, that's one of  
10:51:35 16 the rights you lose. Once you become a convicted felon, you  
10:51:38 17 never have the opportunity or a right to possess a firearm again.  
10:51:43 18 He violated that law the minute he purchased those firearms. The  
10:51:47 19 minute he purchased them, he violated that law. And you heard  
10:51:50 20 from Agent Daniel Jones with ATF, Mr. Longoria knew he couldn't  
10:51:55 21 go into Academy and say, I'd like to buy these for my wife for  
10:51:58 22 her birthday. I mean do we really think that convicted felons  
10:52:01 23 won't come in and lie? This isn't for me, it's for my wife for  
10:52:04 24 her birthday. Okay.

10:52:06 25 Responsibility. To this day, he's not accepting

10:52:10 1 responsibility for his actions. In the law it does not talk  
10:52:19 2 about ownership because if it did, then every convicted felon  
10:52:24 3 could circumvent the law. And we talked a little earlier, I  
10:52:27 4 think it was Mr. Orr, maybe some of the jurors, when we were  
10:52:30 5 talking about loopholes or someone got up on the witness stand, I  
10:52:32 6 remember that coming out.

10:52:33 7 But look through the charge. It never says the  
10:52:35 8 government has to establish whose gun it is, who's owning it. It  
10:52:39 9 talks about possession because, otherwise, the Longorias of the  
10:52:43 10 world could say, okay, wife, go buy this gun at Academy, then  
10:52:46 11 I'll have a bill of sale, I'll have documentation that it's your  
10:52:49 12 firearm so we could have it at our house all day long. I'll have  
10:52:52 13 access to it, can do whatever I want to it, but if the police say  
10:52:55 14 something, I'm like it's not my gun. But that's not the law.  
10:52:58 15 The law is possession. And the Judge gives you a definition of  
10:53:01 16 possession, whether it's on your person or your ability to  
10:53:05 17 exercise control over it.

10:53:07 18 The defense argument, I wanted to address that because  
10:53:12 19 I think it's somewhat, once again, of not taking responsibility.  
10:53:16 20 We want to talk all about Jonathan Lee being this big-time gun  
10:53:21 21 seller, like he's buying firearms, selling them. He told you  
10:53:24 22 seven or eight firearms over the course of two to three years  
10:53:27 23 that he sold, trade, et cetera, or needed money for. If he's  
10:53:31 24 making 100, 150 at a pop, is that how you make a living for two  
10:53:36 25 to three years? It's not reasonable.

10:53:39 1 But we get back to responsibility. Even if that's  
10:53:44 2 true, how does that take away Arthur Longoria's responsibility  
10:53:48 3 for purchasing the firearm? He wants you look at everybody else  
10:53:52 4 except for him. And I would ask you not to allow him to shirk  
10:53:57 5 his responsibility. He's a convicted felon. He's not allowed to  
10:54:01 6 possession firearms, and the evidence has established that he  
10:54:04 7 possessed a firearm from when Jonathan Lee sold it to him, all  
10:54:08 8 the way until the police went to his home on December 4th, year  
10:54:13 9 2007, and found him with that firearm. I ask you to return a  
10:54:17 10 verdict of guilty. Thank you.

10:54:22 11 THE COURT: Now, members of the jury, I'm going to  
10:54:25 12 reverse myself and tell you it's time to talk about this case.  
10:54:35 13 And I'll have the security officer, Mr. Hall, sworn, please.

10:54:42 14 THE CLERK: Do you solemnly swear or affirm that you'll  
10:54:47 15 keep this jury during their retirement in some convenient place,  
10:54:50 16 removed from the presence of others; and that you will not  
10:54:53 17 without leave of court allow anyone to speak to them; that you  
10:54:56 18 will not without leave of court speak to them yourself except to  
10:55:00 19 ascertain whether they have agreed upon their verdict and to  
10:55:02 20 attend to their desire for necessities; that you will well and  
10:55:06 21 faithfully discharge your duties of this court, so help you God?

10:55:10 22 COURT SECURITY OFFICER: I will.

10:55:11 23 THE COURT: Place you in Mr. Hall's custody. When you  
10:55:18 24 are through rendering a verdict, advise him, give him any  
10:55:28 25 communication. Ms. Juday, and, Mr. Stegman, y'all are alternate

10:55:35 1 jurors. Do you have anything in the jury room? Okay. I'll have  
10:55:39 2 you go in with them, get your personal articles. We have to keep  
10:55:46 3 you in a separate part, but you're still going to be there as a  
10:55:52 4 juror. And you will not talk with any of the jurors about this  
10:56:00 5 case at the present time. We'll have a special room for you to  
10:56:05 6 sit and wait as the jury returns a verdict. So why don't we take  
10:56:10 7 them in and get their personal articles and then, take them back  
10:56:15 8 out.

10:56:16 9 All right. All rise for the jury.

10:56:43 10 (Jury retires to deliberate.)

10:56:50 11 THE COURT: Stay within contact with Mrs. Sims. I do  
10:56:56 12 not require you to stay in the courtroom, or stay in the  
10:57:01 13 courthouse, but in the event there is any indication, you have to  
10:57:04 14 be able to get here quickly. So give her your cell numbers.

11:37:32 15 (Recess.)

11:37:57 16 THE COURT: I've received jury note No. 1: We've  
11:38:00 17 selected a foreperson, Michael Bowers.

11:38:04 18 And jury note No. 2: We have come to a verdict.

11:38:09 19 Bring them in.

11:38:10 20 (Jury present.)

11:39:04 21 VERDICT

11:39:04 22 THE COURT: Has the jury come to a verdict?

11:39:10 23 THE JUROR: Yes, your Honor, we have.

11:39:11 24 THE COURT: Is it a unanimous verdict?

11:39:12 25 THE JUROR: Yes, sir.

11:39:13 1 THE COURT: Mrs. Sims will come get it. Have you  
11:39:16 2 signed it, sir?

11:39:16 3 THE JUROR: Yes, sir.

11:39:29 4 THE COURT: I'll have the clerk read the verdict.

11:39:32 5 THE CLERK: Answer as to Question No. 1, guilty, signed  
11:39:40 6 this 12th day of August, 2008, at 11:30 a.m., Michael Bowers,  
11:39:46 7 presiding juror.

11:39:47 8 THE COURT: Anybody want the verdict -- the jury  
11:39:50 9 polled?

11:39:51 10 MS. DOUGLAS: No, your Honor.

11:39:53 11 MR. ORR: No, your Honor.

11:39:54 12 THE COURT: Members of the jury, now I'm going to  
11:39:57 13 release you from your confidentiality, which means that you could  
11:40:00 14 talk about the case, if you want to, with anybody that you want  
11:40:03 15 to. It's America. On the other hand, you also have the right  
11:40:07 16 not to talk to anybody. I always encourage the jurors if the  
11:40:10 17 lawyers ask you a question to talk with them, but if you prefer  
11:40:14 18 not, all you have to do is say, "I prefer not to talk about the  
11:40:17 19 case."

11:40:19 20 I have from time to time jurors who get concerned about  
11:40:23 21 being on a jury, but I could tell you that since 1963, when I've  
11:40:29 22 been actively involved as a lawyer, and now as a judge for all  
11:40:32 23 these years, I've never seen a single juror even bothered by  
11:40:39 24 anybody in Texas. Now, you read about it in California, but  
11:40:44 25 everything goes on in California. So I'm not responsible for

11:40:47 1 that. But if you don't want to talk about the case, you don't  
11:40:50 2 have to, and just tell the lawyers you prefer not. If the  
11:40:56 3 lawyers ask you a question about what they did was good, or bad,  
11:40:59 4 or anything like that, it doesn't hurt to get an objective  
11:41:04 5 viewpoint from somebody who comes in and is a juror in the case,  
11:41:07 6 but that's up to you.

11:41:09 7 I have one more administrative responsibility for you  
11:41:11 8 and the alternate jurors in the jury room. You'll be through in  
11:41:17 9 about five minutes. And you have the thanks of the Court for  
11:41:20 10 this service. And place you back in Mr. Hall's authority.

11:41:52 11 (Jury exits.)

11:42:02 12 THE COURT: I'll accept the verdict, file it with the  
11:42:04 13 clerk, and we'll set sentencing in this case for October 17th.  
11:42:09 14 October 17th, Friday, at 9:00.

11:42:11 15 MR. ORR: Yes, your Honor.

11:42:12 16 THE COURT: Counsel, thank you for the professional way  
11:42:14 17 that you treated the Court. And you are excused.

18 (End of proceedings.)

19

20

21

22

23

24

25

\* \* \* \* \*

UNITED STATES DISTRICT COURT)  
WESTERN DISTRICT OF TEXAS )

I, LILY I. REZNIK, Official Court Reporter, United States District Court, Western District of Texas, do certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

I certify that the transcript fees and format comply with those prescribed by the Court and Judicial Conference of the United States.

WITNESS MY OFFICIAL HAND this the 23rd day of February, 2009.

/s/Lily I. Reznik  
LILY I. REZNIK, RPR, CRR  
Official Court Reporter  
United States District Court  
Austin Division  
200 W. 8th Street, 2nd Floor  
Austin, Texas 78701  
(512) 916-5564  
Certification No. 4481  
Expires: 12-31-10

LILY I. REZNIK, OFFICIAL COURT REPORTER  
U.S. DISTRICT COURT, WESTERN DISTRICT OF TEXAS (AUSTIN)